IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 9920 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRI RAJESHKUMAR MULCHANDBHAI THAKKAR AND ANOTHER
Versus
THE STATE OF GUJARAT AND ANOTHER

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Appearance :
MRS CALLA for MR YOGESH S LAKHANI for Applicants.
MS MANISHA SHAH, APP for Respondent No. 1.
MR NV GANDHI for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 23/01/2006

ORAL JUDGMENT

RULE. Ms. Manisha Shah, learned APP waives service of notice of rule on behalf of respondent No.1 and Mr.N.V.Gandhi, learned advocate waives service of notice of rule on behalf of respondent No.2. With the

consent of the parties, matter is taken up for final hearing today.

By filing this application, the applicants have prayed that since the dispute in question is of civil nature, complaint filed by respondent No.2 – bank being C.R.No. I-65/2003 with Dhansura Police Station may be quashed. Respondent No.2 has filed aforesaid complaint on 19-9-2003 against present applicants and against one Shri Hareshbhai Chhotalal Panchal. Aforesaid complaint is filed under Sections 406, 409 and 420 of the Indian Penal Code. Allegation made against the applicants is that the applicants have taken loan of Rs.10 Lacs for the business purpose and though they have executed certain documents, loan amount is not repaid with interest.

At the time of hearing of this application, Mrs.Calla, learned advocate for the applicants submitted that entire amount is repaid to the bank and the bank has also given a “No Due Certificate”.

Mr.Gandhi, learned advocate for the respondent No.2-bank submitted that it is true that entire amount is repaid and now the bank is not required to recover any amount from the applicants. He further submitted that in view of above position, he does not have any objection if the complaint in question is quashed so far as present applicants are concerned, however, he submitted that complaint against rest of the accused may be allowed to proceed in accordance with law.

It is required to be noted that though the complaint is of 2003, there is nothing to show that even the complaint is investigated by this time. Considering the fact that allegations made in the complaint are in

connection with demand of money, which, prima facie is of civil nature and considering the fact that bank has no objection if the complaint is quashed so far as present applicants are concerned as the amount in question is already paid and bank has already issued "No Due Certificate", this application is allowed. FIR being C.R.No.I-65 of 2003 registered with Dhansura Police Station is quashed so far as present applicants are concerned and subsequent proceedings, if any, taken on the basis of the aforesaid complaint are also quashed. Rule is made absolute.

It is clarified that this order is confined only qua present applicants and it will not come in the way of prosecution so far as proceedings against other accused are concerned.

(P.B.MAJMUDAR, J.)

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